

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TERRANCE JON IRBY,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendants.

CASE NO. C15-5208 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING
APPLICATIONS TO PROCEED IN
FORMA PAUPERIS, AND
DIRECTING PLAINTIFF TO PAY
THE FILING FEE

This matter comes before the court on the Report and Recommendation of the Magistrate Judge. Dkt. 12. The court has considered the relevant record, including plaintiff's objections (Dkt. 13), plaintiff's second application to proceed *in forma pauperis* (Dkt. 14), and plaintiff's First Amended Complaint (Dkt. 14-1).

On April 28, 2015, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, recommending that plaintiff's application to proceed *in forma pauperis* be denied because he has filed three or more civil actions or appeals that were dismissed as

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1 frivolous and for failure to state a claim; and because the complaint does not show that he is in
2 imminent danger of serious injury. Dkt. 12.

3 On May 8, 2015, plaintiff filed objections to the Report and Recommendation (Dkt. 13
4 and 13-1), a second application to proceed *in forma pauperis* (Dkt. 14), and a First Amended
5 Complaint (Dkt. 14-1). The court has construed all of the documents plaintiff has filed in
6 considering the pending Report and Recommendation. Plaintiff essentially repeats the
7 allegations that he set forth in his original complaint (challenging prison requirements that he
8 sleep in a position that is near to a table in his cell and that resulted in injuries to him when he
9 fell off of his bunk, and management of his medication). He also adds claims about the denial of
10 adequate mental health services, and food and diet issues. The court concurs with the magistrate
11 judge, who concluded that plaintiff had not shown that he is in imminent danger of serious
12 injury.

13 The court agrees with the analysis in the Report and Recommendation. The record shows
14 that plaintiff has filed three or more cases during his incarceration that were dismissed by the
15 district court and the Ninth Circuit U.S. Court of Appeals on the grounds that they were frivolous
16 or failed to state a claim. Plaintiff has failed to allege facts sufficient to show that he is in
17 imminent danger of serious physical injury. Accordingly, under 28 U.S.C. § 1915(g), plaintiff's
18 applications to proceed *in forma pauperis* (Dkts. 1 and 14) should be denied.

19 Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Dkt. 12) is
20 **ADOPTED**. Plaintiff's applications to proceed *in forma pauperis* (Dkts. 1 and 14) are **DENIED**.
21 Not later than June 12, 2015, plaintiff is **ORDERED** to pay the \$400.00 filing fee to the Clerk of
22 the Court. If plaintiff fails to pay the \$400 filing fee by June 12, 2015, the court will dismiss this
23 case.

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1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 18th day of May, 2015.

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5 ROBERT J. BRYAN
6 United States District Judge
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